

# **GOVERNMENT NOTICE**

## **RETIREMENT FUNDS STANDARDS**

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

**No. X**

**2014**

### **STANDARDS MADE UNDER THE FINANCIAL INSTITUTIONS AND MARKETS ACT, 2013**

The Namibia Financial Institutions Supervisory Authority has under section 378 of the Financial Institutions and Markets Act, 2013 (Act No. X of 2013), made the Standards set out in the Schedule.

**Estelle Tjipuka**

**Chairperson**

**Windhoek,**

**2014**

## **SCHEDULE**

### **PART I**

#### **INTRODUCTORY PROVISIONS**

##### **21. Citation**

These standards may be cited as the Retirement Funds Standards (Specific).

##### **22. Interpretation**

In these Standards “the Act” means the Financial Institutions and Markets Act, 2013, including any subordinate measure made there under, and any word or expression to which a meaning has been assigned in the Act or subordinate measure, bears that meaning, and unless the context indicates otherwise.

## PART II

### RETIREMENT FUND STANDARDS

#### FINANCIAL INSTITUTIONS AND MARKETS ACT, 2015 [Act No. • of 2015] COMPULSORY BENEFICIARY NOMINATION FORMS

##### Standard No. RFS.5.9

*made by NAMFISA under section 382(6)(r) of the Financial Institutions and Markets Act, 2015*

1. In this Standard, “Act” means the *Financial Institutions and Markets Act, 2015* [Act No. • of 2015], and includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act.

2. Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including, without limitation, the following:

(a) as defined in section 1 of the Act:

(a.i) board<sup>1</sup>;

(a.ii) retirement fund;

(a.iii) spouse;

(b) as defined in section 242 of the Act:

(i) dependent;

(ii) fund;

(iii) member;

(iv) nominee.

3. This Standard applies to all retirement funds registered under the Act or to which the Act otherwise applies.

4. For the purposes of section 268 of the Act, every retirement fund must obtain from all its members, at least once every year, a beneficiary nomination form, in the form of Schedule 1 attached hereto and forming part hereof, indicating as applicable a designated dependent or dependents, and a nominee or nominees to receive benefits from the fund upon the death of the member.

---

1 The definition of “board” in section 1 of the Act includes “the board of trustees of a retirement fund”.

5. The beneficiary nomination form referred to in clause 3 must be received by the fund on or before the 15<sup>th</sup> of January each year.

6. The board of the retirement fund shall ensure that the following is included in the beneficiary nomination form:

- (a) **Nomination category for legal dependents** (for example, a spouse<sup>2</sup> and children, including adopted children, stepchildren and ex-nuptial children, regardless of whether the child was financially dependent on the member);
- (b) **Nomination category for factual dependents** (for example, mother, father or any other person living with the member or who is financially dependent upon the member, including a former spouse to whom the member is paying maintenance, or children of whom the member is the guardian); it is the responsibility of the trustee to decide whether a particular person was financially dependent on the member at the time of death;
- (c) **Nomination category for other beneficiaries** (nominees indicated on the beneficiary nomination form of the member).

7. Members are entitled to amend their beneficiary nomination forms at any time by completing a new beneficiary nomination form, in which case any and all preceding beneficiary nomination forms will be invalid and of no force and effect.

---

<sup>2</sup>A spouse includes (a) a common law partner in a union recognised in common law as a life-time cohabitation arrangement; (b) a partner in a customary union according to customary law or custom; or (c) a partner in a union recognised as a marriage under the tenets of any religion; refer to definition of “spouse” in section 1 of the Act.

# FINANCIAL INSTITUTIONS AND MARKETS ACT, 2015 [Act No. • of 2015]

## FIT AND PROPER CRITERIA

### Standard No. GEN.S.9.2

*made by NAMFISA under section 382(2)(d) of the Financial Institutions and Markets Act, 2015*

1. (1) In this Standard-

- (a) “Act” means the *Financial Institutions and Markets Act, 2015* [Act No. • of 2015], and includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;
- (b) “Companies Act” means the Companies Act, 2004 [Act No.28 of 2004];
- (c) “Financial Intelligence Act” means the Financial Intelligence Act, 2012 [Act No. 13 of 2012]; and
- (d) “Registrar” means the Registrar of Companies as defined in the Companies Act;

(2) For the purposes of this Standard, “company” means a company as defined in the Companies Act, but also includes a registered exchange referred to in section 86 of the Act.

(3) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including, without limitation, the following, which are defined in section 1 of the Act:

- (a) associate;
- (b) board;
- (c) financial crime;
- (d) financial institution;
- (e) financial intermediary;
- (f) NAMFISA; and

(g) principal officer.

(4) The following words and phrases defined in the Financial Intelligence Act have the same meaning in this Standard:

(a) accountable institution;

(b) financing of terrorism;

(c) money laundering activity; and

(d) reporting institution.

2. This Standard is applicable to all individuals and companies required under the Act to be fit and proper, including, without limitation:

(a) all financial institutions and financial intermediaries that are companies registered or authorised, or applying to be registered or authorised, under the Act; and

(b) all individuals registered or authorised or applying to be registered or authorised under the Act, including, without limitation:

(i) members or proposed members of a board, principal officers, other officers, trustees, custodians, auditors and valuers of financial institutions or financial intermediaries referred to in sub-clause (a);

(ii) members of a board of an entity that controls a financial institution or financial intermediary referred to in sub-clause (a); and

(iii) any other individual or entity involved in the management or administration of a financial institution or financial intermediary registered under the Act; and

(iv) any other person who is or may become subject to the Act.

3. In assessing the fitness and propriety of an individual, judgment and discretion must be exercised by NAMFISA to ensure that the individual is not likely to have significant implications for the sound and prudent management of the financial institution or financial intermediary, and such assessment must take into account all relevant matters including, but not limited to:

- (a) education and experience;
- (b) competence and capability;
- (c) honesty, integrity, fairness and ethical behaviour; and
- (d) financial soundness.

4. Subject to an evaluation of the particular circumstances, NAMFISA must determine whether an individual meets the fit and proper criteria referred to in clause 3 with reference to the following:

(a) **Education and experience:** An individual meets the education and experience requirement of the fit and proper criteria if that individual has met any educational and experience requirements as stated by NAMFISA in the Schedules attached hereto applicable to specific registered financial institutions and financial intermediaries;

(b) **Competence and capability:** An individual meets the competence and capability requirement of the fit and proper criteria if that individual has an appropriate range of skills or experience or both, as applicable, to understand, operate and manage the activities and financial affairs of the registered financial institution or financial intermediary in question; and

(i) in the case of an auditor, has the technical knowledge and ability to perform the duties for which the auditor is engaged, and is qualified as an auditor within the meaning of the Act; and

(ii) in the case of a valuator, has the technical knowledge and ability to perform the duties for which the valuator is engaged, and is qualified as an actuary or other expert within the meaning of the Act;

(c) **Honesty, integrity, fairness and ethical behaviour:** An individual meets the honesty, integrity, fairness and ethical behaviour requirement of the fit and proper criteria if that individual has been candid, truthful and accurate in all his or her dealings with any regulatory body, including NAMFISA, and the individual demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system of the Act and with other legal, regulatory and professional requirements and standards, and-

(i) has not been disqualified from being a director of a company in terms of section 225 and section 226 of the Companies Act;

(ii) has not breached a fiduciary obligation;

(iii) has not perpetrated or participated in grossly negligent, deceitful, or otherwise discreditable business or professional practices;

(iv) has not been reprimanded, disqualified or removed by a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct;

(v) has not been substantially involved in the management of a business or entity which has failed, where that failure has been occasioned in part by deficiencies of honesty, integrity, fairness or ethical behaviour in that management;

(vi) is not of bad repute in any business, financial community or market; and

(vii) has not been the subject of civil or criminal proceedings or enforcement action in relation to the management of an entity, or commercial or professional activities, which proceedings or enforcement action were determined adversely to the individual (including the individual consenting to an order or direction, or giving an undertaking not to engage in unlawful or improper conduct) and which reflected adversely on the competence, diligence, judgment, honesty or integrity of the individual;

**(d) Financial Soundness:** The financial soundness of an individual must be determined by the following factors in addition to the requirements stated by NAMFISA in the Schedules applicable to specific registered financial institutions and financial intermediaries:

(i) whether there are any indicators that the individual will not be able to meet his or her debts as they fall due;

(ii) whether the individual meets the relevant solvency requirements;

(iii) whether the individual has seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failure caused loss to others;

(iv) whether the individual has been subject to any judgment debt or award that remains outstanding or which has not been satisfied within a reasonable period;

(v) whether the individual meets required minimum financial and insurance or bonding requirements, if any;

(vi) whether the individual has made arrangements with creditors, filed for sequestration or liquidation or been declared bankrupt or had assets repossessed; and

(vii) whether the individual has been able to provide a satisfactory credit reference.



**5.** An individual must be considered not to meet the fit and proper criteria if the individual is in contravention of any requirement of the Financial Intelligence Act or has committed a financial crime.

**6.** In assessing the fitness and propriety of an individual to hold office in a company that is, or will become upon registration-

**(a)** a financial institution or financial intermediary; and

**(b)** an accountable or reporting institution;

NAMFISA must take into account any involvement, whether directly or indirectly, by that individual in any non-compliance with the Financial Intelligence Act or any regulation, order, notice, circular, determination or directive made under the Financial Intelligence Act, and any involvement in-

**(c)** any money laundering activity; or

**(d)** any terrorist or financing of terrorism related activity.

**7.** An individual must demonstrate that he or she meets the criteria set out in clauses 3, 4, 5 and 6 upon registration or authorisation and on an on-going basis.

**8.** An individual must comply with any continuing education requirements that may be required by NAMFISA.

**9.** Failure by an individual to meet any one of the criteria set out in clause 4 need not lead to an automatic refusal of an application, revocation of a registration or authorisation, revocation of an exemption or other regulatory action by NAMFISA. The significance and relevance of an individual failing to meet specific criteria depends on-

**(a)** the seriousness of, and surrounding circumstances resulting in, the individual failing to meet the specific criteria;

**(b)** the relevance of the failure by the individual to meet the specific criteria to the duties that are, or are to be, performed and the responsibilities that are, or are to be, assumed by the individual; and

**(c)** the length of time since the individual failed to meet the specific criteria.

**10.** Where an individual is required to apply directly to NAMFISA for registration or authorisation, the following documents must be submitted to facilitate the assessment of fitness and propriety:

**(a)** personal questionnaire and declaration form;

**(b)** an up-to-date and signed curriculum vitae;

- (c) police clearance or criminal record (if applicable); and
- (d) any other document that NAMFISA deems necessary for the purpose.

11. Where an individual is required to apply to a financial institution or financial intermediary for registration by NAMFISA or authorisation by the financial institution or financial intermediary, the financial institution or financial intermediary:

- (a) must have in place a system to ensure that the individual meets the criteria set out in clauses 3 and 4 and the policy referred to in clause 16; and
- (b) may request the individual to submit the documents as required in clause 11 with such changes as the context may require.

12. In assessing the fitness and propriety of a company, judgment and discretion must be exercised to ensure that the company has or will have sound and prudent management and that it is not likely to have significant adverse implications for-

- (1.a.i) the financial soundness and stability of the financial institutions and markets sector;
- (1.a.ii) the protection of consumers of financial services; and
- (1.a.iii) the reduction and deterrence of financial crime.

13. The assessment referred to in clause 12 must take into account all relevant matters including, but not limited to;

- (a) in accordance with the criteria set out in clauses 4, 5 and 6, the fitness and propriety of-
  - (i) members of the board, principal officer and other officers, and any trustee, custodian, auditor and valuator of the company; and
  - (ii) members of the board of any entity that controls the company;
- (b) the honesty, integrity, fairness and ethical behaviour of the company; and
- (c) the financial soundness of the company.

14. The assessment referred to in sub-clause 13(b) must take into account-

- (a) whether the company has been candid and accurate in the application for registration or authorisation, and has disclosed all relevant facts or information at the disposal of, or which are accessible to, the company and which are required by or are relevant to NAMFISA, in determining the fitness and propriety of the company;

- (b) whether the company has ensured that at the recruitment stage of individuals referred to in sub-clause 13(a) the fit and proper requirements of sub-clause 4(c) have been clearly explained and addressed with the individual.
- 15. In order to meet the requirements of sub-clause 13(c), the company must:
  - (a) not be an unrehabilitated insolvent or under liquidation;
  - (b) have assets (excluding goodwill, other intangible assets and investments in associates) that exceed the company's liabilities (excluding loans validly subordinated in favour of all other creditors) by at least Namibia dollars •;
  - (c) maintain current assets which are at least sufficient to meet current liabilities;
  - (d) maintain liquid assets equal to at least twenty-five percent of annual expenses or estimated annual expenses, or such greater amount as NAMFISA may determine; and
  - (e) have audited financial statements referred to in sub-clause 21(c) that are satisfactory to NAMFISA.
- 16. Every financial institution and financial intermediary that is a company must have a documented policy relating to fitness and propriety for the individuals referred to in sub-clause 13(a), which must include compliance with any continuing professional development requirements issued by NAMFISA, and such policy must be approved by the board or, where applicable, by the board of the entity that controls the financial institution or financial intermediary.
- 17. Every financial institution and financial intermediary that is a company must take all reasonable steps to ensure all individuals to whom its fit and proper policy applies are aware of, and understand, the provisions of that policy.
- 18. The fit and proper policy referred to in clauses 16 and 17 must form part of the risk management framework of the financial institution or financial intermediary.
- 19. A financial institution or financial intermediary that is a company must submit to the Registrar annually the information required by subsection 4(1)(a) of the Financial Intelligence Act.
- 20. A financial institution or financial intermediary that is a company and that is also an accountable institution or reporting institution, must have in place all policies, procedures and systems to ensure compliance with the Financial Intelligence Act.
- 21. Where a company applies to NAMFISA for registration or authorisation, the following documents must be submitted to facilitate the assessment of fitness and propriety:
  - (a) corporate questionnaire and declaration form;

- (b) copy of the Memorandum of Association and Articles of Association or Articles of Incorporation or Continuance and By laws or other instrument of incorporation and certificate of incorporation, or other foundation documents of the entity;
- (c) copies of audited financial statements of the entity for three consecutive years immediately preceding the application or for each year it has been in operation, if less than three years; and
- (d) any other documents that NAMFISA deems necessary for the purpose.

## **SUPPORTING SCHEDULES**

The following supporting schedules are attached to and form part of this Standard:

- Schedule 1: Micro lending
- Schedule 2: Collective Investment Schemes
- Schedule 3: Capital Markets
- Schedule 4: Friendly Societies
- Schedule 5: Short-term Insurance
- Schedule 6: Long-term Insurance

## SCHEDULE 1 MICROLENDING

### **PART A**

A person is able to demonstrate honesty and integrity if that person:

- i) is not disqualified from being a director of a company in terms of section 225 and section 226 of the Companies Act, 2004 (Act No. 28 of 2004);
- ii) has not breached a fiduciary obligation;
- iii) has not perpetrated or participated in grossly negligent, deceitful, fraudulent or otherwise discreditable business or professional practices;
- iv) has not been reprimanded, or disqualified, or removed by a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct;
- v) has not been substantially involved in the management of a business or company which has failed, where that failure has been occasioned in part by deficiencies of honesty, integrity, fairness or ethical behaviour in that management;
- vi) is not of bad repute in any business or financial community or any market;
- vii) was not the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the person (including by the person consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the person's competence, diligence, judgment, honesty or integrity;
- viii) has not been the subject of any justified complaint relating to regulated activities;
- ix) has not been, as a result of the removal of the relevant licence, registration or other authority, been refused the right to carry on a trade, business or profession requiring a licence, registration or other authority;
- x) has not been dismissed, or asked to resign and resigned, from employment or from a position of trust, or similar; and
- xi) has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.

### **PART B**

	Qualification & training	Experience	Duties
Owners (members, partners, shareholders), Trustees and Directors	At least Grade 12 Computer literacy	i. At least two years business experience.	
Principal officer	At least Grade 12 Computer literacy	i. At least two years administrative / business experience ii. Knowledge of Usury Act iii. Knowledge of the exemption notice issued in terms of	i. Day-to-day administrative duties, i.e. ensuring that all NAMFISA requirements with regard to the filing and record-keeping of documents are adhered to

		<p>iv. the Usury Act Sound understanding of basic principles set out in Table: ML 2</p>	<p>ii. Is the chief operator of the NAMFISA ERS (Electronic Regulatory System). The person is responsible for logging requests to NAMFISA on this web-based application and is also responsible for the completion of quarterly financial- and statistical returns (MLR-2 returns) and for the electronic submission thereof to NAMFISA</p> <p>iii. Is the Financial- and Administration Officer of the Cash Loan business charged with the collection and accounting of all monies received and payments authorized by and made on behalf of the Cash Loan business</p> <p>iv. Must maintain a proper set of accounting records reflecting full details of all monies advanced, interest and other charges raised, repayments received and all amounts outstanding</p> <p>v. Must ensure compliance with NAMFISA's requirements as far as credit checking on</p>
--	--	---	---

			<p>compuscan credit bureau is concerned</p> <p>vi. Is the reference point for all NAMFISA enquiries, explanations and queries</p> <p>vii. Is the prime contact person for the duration of inspections carried out at the microlending outlet by NAMFISA Inspectors</p> <p>viii. Is responsible, where necessary, for proper and appropriate communication between the microlending outlet and borrowers</p> <p>ix. Is responsible for attending to queries from borrowers and NAMFISA</p> <p>x. Is responsible for ensuring that staff adequately explain the terms and conditions of loan agreements to the borrowers, in a language that the borrowers understand</p> <p>xi. Prepares all NAMFISA reports on a quarterly- and annual basis, e.g. annual financial statements/ accounting records for Sole Proprietors and ensures compliance with all statutory requirements</p>
--	--	--	--



			<p>pertaining thereto</p> <p>xii. Attends all NAMFISA meetings as and when his/her attendance is required</p> <p>xiii. Ensure that NAMFISA levies are paid on time</p> <p>xiv. Responsible for the overall compliance with the NAMFISA registration conditions and the provisions of Government Notice No. 189 and General Notice No. 196 as published in Government Gazette No. 3266 of 25th August 2004.</p>
Other Key Personnel (Branch Manager)	At least Grade 12 Computer literacy	<p>i. At least one year administrative/ business experience</p> <p>ii. Sound understanding of basic principles set out in Table: ML 2</p>	

### **PART C**

- i. Whether the applicant satisfies the relevant NAMFISA training and competence requirements in relation to the applicant's function in the microlending business;
- ii. Whether the applicant has demonstrated by experience and training that the applicant is suitable to perform the functions expected by NAMFISA;
- iii. Whether the applicant has physical business premises from where the microlending business will be conducted;
- iv. Whether Certificates- of Fitness and Registration have been issued by the local authority or municipality in respect of the suitability of the business premises for conducting microlending business;
- v. Whether Articles of Association/Founding Statement or any document by which the applicant is incorporated at the Ministry of Trade and Industry is available;
- vi. Whether an Accounting Officer or Auditor has been appointed to perform book-keeping duties of the applicant;

vii. Whether the applicant's office set-up conforms to NAMFISA's basic office infrastructure requirements in terms of the existence of:

- a. personal computer(s) with subscription to a credit bureau which has been established in terms of the relevant laws;
- b. Office tables and chairs; and
- c. Filing cabinet(s).

**PART D**

An applicant is able to demonstrate financial soundness if:

- i) there are no indicators that the person will not be able to meet their debts as they fall due;
- ii) there are no indications that person has seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failure caused loss to others;
- iii) the person has not been subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period;
- iv) the person has not made arrangements with creditors, filed for bankruptcy, had a bankruptcy petition served on him, been adjudged bankrupt, been the subject of a bankruptcy restrictions order (including an interim bankruptcy restrictions order), offered a bankruptcy restrictions undertaking, had assets sequestrated, or been involved in proceedings relating to any of these; and/or
- v) the person is able to provide the NAMFISA with a satisfactory credit reference.

## **MICROLENDING Basic Principles**

### **The Basic Principles Of Accounting**

- i. calculating interest on loans;
- ii. calculating outstanding balance or settlement amount; and
- iii. knowledge of debits and credits of accounting.

## **SCHEDULE 2**

### **COLLECTIVE INVESTMENT SCHEMES**

#### **PART A**

A person is able to demonstrate honesty and integrity if that person:

- i. is not disqualified from being a director of a company in terms of the Companies Act, 2004
- ii. has not breached a fiduciary obligation;
- iii. has not perpetrated or participated in grossly negligent, deceitful, or otherwise discreditable business or professional practices;
- iv. has not been reprimanded, or disqualified, or removed by a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct;
- v. has not been substantially involved in the management of a business or company which has failed, where that failure has been occasioned in part by deficiencies of honesty, integrity, fairness or ethical behaviour in that management;
- vi. is not of bad repute in any business or financial community or any market;
- vii. was not the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the person (including by the person consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the person's competence, diligence, judgment, honesty or integrity; or
- viii. whether the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.
- ix. has not been refused authorization to carry on business by any regulatory body (whether in Namibia or elsewhere), or has such authorization ever been suspended or revoked by any such body, because of negligence, incompetence or mismanagement;
- x. has not been a substantial shareholder in the business or company which has failed, where that failure has been occasioned in part by deficiencies of honesty, integrity, fairness or ethical behavior in that management;
- xi. has ever been found to be liable under the Financial Intelligence Act, No. 13 of 2012 (FIA), and/or the Prevention of Organized Crime Act, No. 29 of 2004 and/or the Combating of Financing of Terrorist Act, Act No 12 of 2012 and/or any other similar crime in any country.

#### **PART B**

##### **Significant Owners**

A person is deemed to have significant ownership when the person -

- i. owns or

- i. Matric with Commercial or Business related subjects (mathematics,

- i. At least 5 years industry related experience at senior management

controls, directly or indirectly, including through trusts or bearer share holdings for any legal person, 20% or more of the shares or voting rights of the entity; ii. together with a connected person owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal person, 20% or more of the shares or voting rights of the entity; iii. despite a less than 20% shareholding or voting rights, receives a large percentage of the person's declared dividends; or iv. otherwise exercises control over the management of the person in his or her capacity as executive officer, non-executive director, independent non-executive director, director, manager or partner.	economics, accounting and computer science or any other business subject)	level.	
<b>Management</b>	i. A business degree (Finance, Commerce, Accounting, Economics or related business qualification) from an	i. At least three (3) years Industry related experience  ii. At least ten (10) years Industry	

	<p>accredited university.</p> <p>ii. Matric with Commercial or Business related subjects (mathematics, economics, accounting and computer science or any other business subject)</p> <p>iii. Registered persons examinations of the South African Institute of Financial Markets.</p> <p>iv. Chartered Financial Analyst.</p> <p>v. Other qualifications to be evaluated by the Registrar on a case by case basis.</p>	<p>related experience.</p> <p>iii. At least three (3) years Industry related experience.</p> <p>iv. At least one (1) year Industry related experience.</p> <p>v. Determined by Registrar on a case by case basis.</p>	
<p><b>Key employee</b> (an employee with a major ownership and/or decision-making role in the business and includes a <b>director</b>, controlling officer or any other person responsible for managing or overseeing, either alone or together with other such responsible persons, the activities</p>	<p>i. A business degree (Finance, Commerce, Accounting, Economics or related business qualification) from an accredited university.</p> <p>ii. Matric with Commercial or Business related subjects (mathematics, economics,</p>	<p>i. At least three (3) years Industry related experience.</p> <p>ii. At least ten (10) years Industry related experience.</p> <p>iii. At least five (5) years Industry related experience.</p>	

of the investment manager relating to the rendering of any financial services.)	accounting and computer science or any other business subject) iii. Registered persons examinations of the South African Institute of Financial Markets. iv. Chartered Financial Analyst. v. Other qualifications to be evaluated by the Registrar on a case by case basis.	iv. At least one (1) year Industry related experience. v. Determined by Registrar on a case by case basis	
---	--	--	--

## PART C

<p>(a.i.1) Do the compliance arrangements specify how often compliance with procedures are monitored and reported?</p> <p>(a.i.2) Do they use a documented process to maintain the adequacy of their compliance and monitor arrangements?</p> <p>(a.i.3) Do they document processes to ensure records are kept for training programs attended, including continued education training, for their key individuals and/or representatives?</p> <p>(a.i.4) Do they have documented processes for the supervision and monitoring of their representatives to ensure they comply with the Act?</p> <p>(a.i.5) Do they use a documented process to ensure all representatives are trained, competent and will provide financial services on your behalf efficiently, honestly and fairly?</p> <p>(a.i.6) Do they have guarantees, professional indemnity or fidelity insurance cover?</p> <p>(a.i.7) Have they established compliance and reporting arrangements for your entity activities?</p> <p>(a.i.8) Will any substantial activities of the investment management company be outsourced?</p> <p>(a.i.9) Do they have a process in place to ensure that providers selected for any outsourced functions are suitable?</p> <p>(a.i.10) Is entity to which functions are the outsourced a registered regulated entity?</p> <p>(a.i.11) To whom will they be outsourcing these activities?</p> <p>a) Independent party</p> <p>b) Related party</p> <p>c) Both</p> <p>(a.i.12) What functions will be outsourced?</p> <p>(a.i.13) Is the entity to which they intend outsourcing identified?</p>	
--	--

<p>(a.i.14) Do they have internal controls structure, procedure and controls in place which include the following:</p> <p>(a.i.14.a) segregation of duties and roles and responsibilities where such segregation is appropriate from an operational risk mitigation perspective;</p> <p>(a.i.14.b) access rights and data security on electronic data, where applicable;</p> <p>(a.i.14.c) physical security of the providers assets and records, where applicable;</p> <p>(a.i.14.d) documentation relating to business processes, policies and controls, and technical requirements’;</p> <p>(a.i.14.e) system application testing, where applicable;</p> <p>(a.i.14.f) disaster recovery and back-up procedures on electronic data, where applicable;</p> <p>(a.i.14.g) training for all staff regarding the requirements of the Act;</p> <p>(a.i.14.h) training for all key individuals and/or representatives regarding the giving of advice and/or rendering of intermediary services by the provider; and</p> <p>(a.i.14.i) a business continuity plan</p> <p>(a.i.15) Are their terms and conditions of business separate from their mandate and/or application form?</p>
---

#### **PART D**

An applicant is able to demonstrate financial soundness if:

- a.i.15.a.i.1.a.i. when in existence for more than one year, has had and can provide a copy of its audited financial statements as at its latest financial year end;
- a.i.15.a.i.1.a.ii.can provide a copy of its budgeted income and expenditure statement (income statement), balance sheet and cash flow statements for a three year period from date of its latest financial year end;
- a.i.15.a.i.1.a.iii. can provide a schedule illustrating its funding provisions for anticipated supervisory responsibilities over the budgetary period;
- a.i.15.a.i.1.a.iv. can provide a written statement by its Chief Executive Officer specifying the critical assumptions made in the preparation of budgets as well as specifying the sources of its funding;
- a.i.15.a.i.1.a.v. can provide, where arrangements have been made for funding of any temporary shortfall in available cash resources by the party or parties concerned setting out the extent and terms of their commitment;
- a.i.15.a.i.1.a.vi. can provide a projection of management and staff requirements for the period covered by the budgets;
- a.i.15.a.i.1.a.vii. can provide a Business Plan that has been approved by its controlling body or its highest authority;
- a.i.15.a.i.1.a.viii. can provide details of its compensation plans (professional indemnity and/ or fidelity insurance cover)

- sufficient to cover the risk of losses due to fraud, dishonesty, negligence or any other dishonest acts or breaches of professional duty of its employees, directors or representatives;
- a.i.15.a.i.1.a.ix. can provide proof of at least one million Namibia dollars as capital employed or availability of that amount ready to be employed as capital in the business.
- a.i.15.a.i.1.a.x. there are no indicators that the person will not be able to meet his debts as they fall due;
- a.i.15.a.i.1.a.xi. the person has not seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failure caused loss to others;
- a.i.15.a.i.1.a.xii. the person has not been subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period;
- a.i.15.a.i.1.a.xiii. the person meets prescribed minimum financial and insurance or bonding requirements,
- a.i.15.a.i.1.a.xiv. the person has not made arrangements with creditors, filed for sequestration or liquidation or been adjudged bankrupt or had assets sequestered;
- a.i.15.a.i.1.a.xv. the person has been able to provide a satisfactory credit reference;

### **SCHEDULE 3**

#### **TABLE: CAPITAL MARKET**

##### **PART A**

A person is able to demonstrate honesty and integrity if that person:

- i. is not disqualified from being a director of a company in terms of the Companies Act, 2004
- ii. has not breached a fiduciary obligation;
- iii. has not perpetrated or participated in grossly negligent, deceitful, or otherwise discreditable business or professional practices;
- iv. has not been reprimanded, or disqualified, or removed by a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct;
- v. has not been substantially involved in the management of a business or company which has failed, where that failure has been occasioned in part by deficiencies of honesty, integrity, fairness or ethical behaviour in that management;
- vi. is not of bad repute in any business or financial community or any market;
- vii. was not the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the person (including by the person consenting to an order or direction, or giving an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the person's competence, diligence, judgment, honesty or integrity; or
- viii. whether the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and



professional requirements and standards.

ix. has not been refused authorization to carry on business by any regulatory body (whether in Namibia or elsewhere), or has such authorization ever been suspended or revoked by any such body, because of negligence, incompetence or mismanagement;

x. has not been a substantial shareholder in the business or company which has failed, where that failure has been occasioned in part by deficiencies of honesty, integrity, fairness or ethical behavior in that management;

xi. has ever been found to be liable under the Financial Intelligence Act, No. 13 of 2012 (FIA), and/or the Prevention of Organized Crime Act, No. 29 of 2004 and/or the Combating of Financing of Terrorist Act, Act No 12 of 2012 and/or any other similar crime in any country.

## **PART B**

### **Significant Owners**

A person is deemed to have significant ownership when the person -

i. owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal person, 20% or more of the shares or voting rights of the entity;

ii. together with a connected person owns or controls, directly or indirectly, including through trusts or bearer share holdings for any legal person, 20% or more of the shares or voting rights of the entity;

iii. despite a less than 20% shareholding or voting rights, receives a large percentage of the person's declared dividends; or

iv. otherwise exercises control over the management of the person in his or

vi. Matric with Commercial or Business related subjects (mathematics, economics, accounting and computer science or any other business subject)

vi. At least 5 years industry related experience at senior management level.

her capacity as executive officer, non-executive director, independent non-executive director, director, manager or partner.			
<b>Management</b>	<ul style="list-style-type: none"> <li>ii. A business degree (Finance, Commerce, Accounting, Economics or related business qualification) from an accredited university.</li> <li>vii. Matric with Commercial or Business related subjects (mathematics, economics, accounting and computer science or any other business subject)</li> <li>viii. Registered persons examinations of the South African Institute of Financial Markets.</li> <li>ix. Chartered Financial Analyst.</li> <li>x. Other qualifications to be evaluated by</li> </ul>	<ul style="list-style-type: none"> <li>ii. At least three (3) years Industry related experience .</li> <li>vii. At least ten (10) years Industry related experience.</li> <li>viii. At least three (3) years Industry related experience.</li> <li>ix. At least one (1) year Industry related experience.</li> <li>x. Determined by Registrar on a case by case basis.</li> </ul>	

	the Registrar on a case by case basis.		
<b>Key employee</b> (an employee with a significant ownership and/ or decision-making role in the business and includes a <b>director</b> , controlling officer or any other person responsible for managing or overseeing, either alone or together with other such responsible persons, the activities of the investment manager relating to the rendering of any financial services.)	i. A business degree (Finance, Commerce, Accounting, Economics or related business qualification) from an accredited university. ii. Matric with Commercial or Business related subjects (mathematics, economics, accounting and computer science or any other business subject) iii. Registered persons examinations of the South African Institute of Financial Markets. iv. Chartered Financial Analyst.  v. Other qualifications to be evaluated by the Registrar on a case by case basis.	i. At least three (3) years Industry related experience.  ii. At least ten (10) years Industry related experience.  iii. At least five (5) years Industry related experience.  iv. At least one (1) year Industry related experience. v. Determined by Registrar on a case by case basis	

### **PART C**

<p>(a.i.1) Do the compliance arrangements specify how often compliance with procedures are monitored and reported?</p> <p>(a.i.2) Do they use a documented process to maintain the adequacy of their compliance and monitor arrangements?</p> <p>(a.i.3) Do they document processes to ensure records are kept for training programs attended, including continued education training, for their key individuals and/or representatives?</p> <p>(a.i.4) Do they have documented processes for the supervision and monitoring of their representatives to ensure they comply with the Act?</p> <p>(a.i.5) Do they use a documented process to ensure all representatives are trained, competent and will provide financial services on your behalf efficiently, honestly</p>
---

and fairly?

(a.i.6) Do they have guarantees, professional indemnity or fidelity insurance cover?

(a.i.7) Have they established compliance and reporting arrangements for your entity activities?

(a.i.8) Will any substantial activities of the investment management company be outsourced?

(a.i.9) Do they have a process in place to ensure that providers selected for any outsourced functions are suitable?

(a.i.10) Is entity to which functions are the outsourced a registered regulated entity?

(a.i.11) To whom will they be outsourcing these activities?

d) Independent party

e) Related party

f) Both

(a.i.12) What functions will be outsourced?

(a.i.13) Is the entity to which they intend outsourcing identified?

(a.i.14) Do they have internal controls structure, procedure and controls in place which include the following:

(a.i.14.a) segregation of duties and roles and responsibilities where such segregation is appropriate from an operational risk mitigation perspective;

(a.i.14.b) access rights and data security on electronic data, where applicable;

(a.i.14.c) physical security of the providers assets and records, where applicable;

(a.i.14.d) documentation relating to business processes, policies and controls, and technical requirements’;

(a.i.14.e) system application testing, where applicable;

(a.i.14.f) disaster recovery and back-up procedures on electronic data, where applicable;

(a.i.14.g) training for all staff regarding the requirements of the Act;

(a.i.14.h) training for all key individuals and/or representatives regarding the giving of advice and/or rendering of intermediary services by the provider; and

(a.i.14.i) a business continuity plan

(a.i.15) Are their terms and conditions of business separate from their mandate and/or application form?

## **PART D**

An applicant is able to demonstrate financial soundness if:

a.i.15.a.i.1.a.i. when in existence for more than one year, has had and can provide a copy of its audited financial statements as at its latest financial year end;

a.i.15.a.i.1.a.ii.can provide a copy of its budgeted income and expenditure statement (income statement), balance sheet and cash flow statements for a three year period from date of its latest financial year end;

- a.i.15.a.i.1.a.iii. can provide a schedule illustrating its funding provisions for anticipated supervisory responsibilities over the budgetary period;
- a.i.15.a.i.1.a.iv. can provide a written statement by its Chief Executive Officer specifying the critical assumptions made in the preparation of budgets as well as specifying the sources of its funding;
- a.i.15.a.i.1.a.v. can provide, where arrangements have been made for funding of any temporary shortfall in available cash resources by the party or parties concerned setting out the extent and terms of their commitment;
- a.i.15.a.i.1.a.vi. can provide a projection of management and staff requirements for the period covered by the budgets;
- a.i.15.a.i.1.a.vii. can provide a Business Plan that has been approved by its controlling body or its highest authority;
- a.i.15.a.i.1.a.viii. can provide details of its compensation plans (professional indemnity and/ or fidelity insurance cover) sufficient to cover the risk of losses due to fraud, dishonesty, negligence or any other dishonest acts or breaches of professional duty of its employees, directors or representatives;
- a.i.15.a.i.1.a.ix. can provide proof of at least one million Namibia dollars as capital employed or availability of that amount ready to be employed as capital in the business.
- a.i.15.a.i.1.a.x. there are no indicators that the person will not be able to meet his debts as they fall due;
- a.i.15.a.i.1.a.xi. the person has not seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failure caused loss to others;
- a.i.15.a.i.1.a.xii. the person has not been subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period;
- a.i.15.a.i.1.a.xiii. the person meets prescribed minimum financial and insurance or bonding requirements,
- a.i.15.a.i.1.a.xiv. the person has not made arrangements with creditors, filed for sequestration or liquidation or been adjudged bankrupt or had assets sequestered;
- a.i.15.a.i.1.a.xv. the person has been able to provide a satisfactory credit reference;

#### **SCHEDULE 4**

##### **TABLE: FRIENDLY SOCIETIES**

###### **PART A**

A person is able to demonstrate honesty and integrity if that person:

- i. no adverse finding has been made against them within a period of ten years preceding the date of application in any civil or criminal proceedings by a court of law (whether in Namibia or

elsewhere), in which they were found to have acted fraudulently, dishonestly, unprofessionally, dishonorably or in breach of a fiduciary duty.

ii. has not, within a period of ten years preceding the date of application, been found guilty by any professional or financial services industry body (whether in Namibia or elsewhere), of an act of dishonesty, negligence, incompetence or mismanagement.

iii. has not, within a period of ten years preceding the date of application, been denied membership of any professional or financial services industry on account of an act of dishonesty negligence, incompetence or mismanagement.

iv. has not, within a period of ten years preceding the date of application, been found guilty by any regulatory or supervisory body (whether in Namibia or elsewhere) or has an authorization to carry on business been refused, suspended or withdrawn by any such body on account of an act of dishonesty, negligence, incompetence or mismanagement.

v. has not, at any time prior to the date of application, been disqualified or prohibited by any court of law (whether in Namibia or elsewhere) from taking part in the management of any company or other statutorily created, recognized or regulated body, irrespective whether such disqualification has since been lifted or not.

vi. has not been the subject of any investigation or disciplinary proceedings by any regulatory authority (whether in Namibia, or elsewhere) or exchange, professional body or government body or agency.

vii. has never been refused authorization to carry on business by any regulatory body (whether in Namibia or elsewhere), or has such authorization ever been suspended or revoked by any such body, because of negligence, incompetence or mismanagement.

viii. is not subject to an order of a competent court holding them to be mentally unfit or disordered.

ix. has not, within a period of ten years preceding the date of application, been removed from office on account of misconduct relating to fraud or the misappropriation of money, whether in Namibia or elsewhere.

x. has not, within a period of ten years preceding the date of application, been a director or member of a governing body of an entity at the time that such entity has been de-registered in terms of public regulation.

xi. has not, within a period of ten years preceding the date of application, received a grant of amnesty or free pardon for any offence.

xii. their estate has never been sequestered.

xiii. Has never been convicted of an offence or found to be liable under the Financial Intelligence Act, No. 13 of 2012 (FIA), and/or the Prevention of Organized Crime Act, No. 29 of 2004 and/or the Combating of Financing of Terrorist Act, Act No 12 of 2012 and/or any other similar crime in any country.

xiv. is not listed on any bad creditors' bureau.

xv. Has never been involved in an event which resulted in the failure of protection of members' funds.

xvi. Has never been involved with a regulated institution when such institution failed to maintain a financial sound position or the required capital or solvency.

## **PART B**

	Qualification	Experience	Requirements
Steering Committee Members	Bachelor degree in a field related to	five years administrative/business	i. ensuring that designated

	commerce OR Grade 12	s experience (Degree) OR Ten years administrative/business experience (Grade 12) AND Range of skills and experience to understand, operate and manage the regulated activities/financial affairs	persons maintain an effective internal control structure, including suspicious activity monitoring and reporting  ii. ensuring that actions and policies are in the best interests of the Friendly Society, will help present the Friendly Society in a positive light to the public and are ethically appropriate
Principal officer	Bachelor degree in a field related to commerce and Computer literacy  OR Grade 12 and Computer literacy	Three years administrative/business experience (Degree) OR Ten years administrative/business experience (Grade 12) AND Range of skills and experience to understand, operate and manage the regulated activities/financial affairs	i. Ensuring that the operations are managed prudently and in accordance with best practices and to ensure adherence to legislation and regulations published thereunder. ii. Inform the Registrar in writing of any matter relating to the affairs of the Friendly Society which, in the opinion of the Principal Officer, may prejudice the society or its members.

Other Office Bearers (Society administrator)	Bachelor degree in a field related to commerce and Computer literacy OR Grade 12 and Computer literacy	Two years administrative/business experience (Degree) OR Four years administrative/business experience (Grade 12) AND Range of skills and experience to understand, operate and manage the regulated activities/financial affairs	
---	--	---	--

#### **PART C**

To be decided by the Registrar on a case by case basis.

#### **PART D**

An applicant is able to demonstrate financial soundness if:

- i. there are no indicators that the person will not be able to meet its debts as they fall due;
- ii. the applicable solvency requirements are met;
- iii. the person has not been subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period;
- iv. the person has not made arrangements with creditors, filed for bankruptcy or been adjudged bankrupt or had assets sequestered;
- v. the person is able to provide NAMFISA with a satisfactory credit reference.



**SCHEDULE 5**  
**SHORT-TERM INSURANCE**

**PART A**

A person is able to demonstrate honesty and integrity if that person:

- i. was not found guilty in any criminal proceedings or liable in any civil proceedings by a Court of Law of acting fraudulently, dishonestly, unprofessionally, dishonorably or in breach of a fiduciary duty.
- ii. was not found guilty by any statutory or professional body or voluntary professional body of dishonesty, negligence, incompetence, mismanagement serious enough to question the honesty and integrity of the person within a period of ten years preceding the application.
- iii. has not been denied membership of any statutory professional body or voluntary professional body because of an act of dishonesty, negligence, incompetence or mismanagement within a period of ten years preceding the application.
- iv. has not been found guilty by a regulatory or supervisory body (in Namibia or outside) of an act of dishonesty, negligence, incompetence or mismanagement serious enough to impugn the honest and integrity of the person within a period of ten years preceding the application.
- v. never had any authorization to carry on business or license withdrawn or suspended by any regulatory or supervisory body because of an act of dishonesty, negligence, incompetence or mismanagement, within a period of ten years preceding the application.
- vi. has never been disqualified or prohibited by a Court of Law from taking part in the management of any company or other statutorily created, recognized or regulated body, regardless of whether the disqualification has since been lifted or not.

**PART B**

	Qualification	Experience	Requirements
Owners/ Shareholders	NONE	NONE	NONE
Key Person (Principal Officer, Senior management, Directors)	At least grade 12 OR A relevant bachelor's Degree	three years insurance experience acquired in the five years preceding the application. seven years short term insurance experience (Grade 12) OR Three years short term insurance experience (Degree)	i. ensure that there are adequate recruitment and appointment procedures in place (to verify Fit & Proper Requirements) when appointing Key Persons and other employees. ii. ensure that obligations in terms of Fit & Proper are included in terms of employment or mandate under which employees operate.

			iii. ensure compliance with the short – term insurance Act iv. Be aware of the FIA
--	--	--	---

## **PART C**

- |                |  |
|----------------|--|
| f.i.1.a.i.i.   | Whether the applicant has appointed a Principal Officer who has full authority to make decision. |
| f.i.1.a.i.ii.  | Compliance with the Short – term insurance Act sections 13 and 13-35 and 48 -71.                 |
| f.i.1.a.i.iii. | Compliance with the FIA Act  |
| f.i.1.a.i.iv.  | Compliance with the NAMFISA Act  |
| f.i.1.a.i.v.   | Compliance with the Companies Act.   |
| f.i.1.a.i.vi.  | Complain with any other relevant Act   |

## **PART D**

An applicant is able to demonstrate financial soundness if:

- i. there are no indicators that the person will not be able to meet its debts as they fall due;
- ii. the person has not seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failure caused loss to others;
- iii. the person has not been subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period;
- iv. the person has not made arrangements with creditors, filed for sequestration or liquidation or been adjudged bankrupt or had assets sequestered;
- v. the person has not been handed over to ITC
- vi. the person has been able to provide the Financial Regulator with a satisfactory credit reference.

## **SCHEDULE 6**

### **LONG-TERM INSURANCE**

## **PART A**

A person is able to demonstrate honesty and integrity if that person:

- i. Has not been convicted of dishonesty, fraud, money laundering, theft, other fraud within the last 10 years.
- ii. the board of directors comprises a balance of executive and non-executive directors, with the majority being non-executive directors.
- iii. has not been found guilty by a statutory or professional body of negligence, incompetence, mismanagement of sufficient importance,
- iv. has not been denied membership of a statutory or voluntary professional body,
- v. is not listed on the Credit Bureau (ITC).
- vi. has not been a significant owner or key person of a company that encountered financial difficulties leading to legal proceedings, bankruptcy or insolvency of such company.

<b>PART B</b>			
	Qualifications	Experience	Requirements
Owners (shareholders)	NONE	NONE	NONE
Director	Relevant Bachelor's degree	Five years of Long-term insurance experience Skills in at least one of the following fields: Accounting, actuarial, legal, human resources or insurance industry background.	i. demonstrate competency to undertake the relevant class of regulated activities including, where appropriate, detailed knowledge of the structure, purpose and risks of the products. ii. Collectively demonstrate knowledge and expertise relating to the: <ul style="list-style-type: none"> <li>a. professional management of the institutions;</li> <li>b. rules and regulations applicable to the insurer;</li> <li>c. insurance products and markets;</li> <li>d. financial and actuarial aspects</li> <li>e. administrative organization, internal control, information technology and risk management;</li> <li>f. financial accounting and reporting</li> </ul>
Principal Officer	Relevant Bachelor's degree	Five years of Long-term insurance experience	

## **PART D**

An applicant is able to demonstrate financial soundness if:

- i. there are no indicators that the person will not be able to meet its debts as they fall due;
- ii. the relevant solvency requirements are met;
- iii. the person has not been subject to any judgment debt that remains outstanding or has not been satisfied within a reasonable period;
- iv. the person has not made arrangements with creditors, filed for bankruptcy or been declared bankrupt or had assets repossessed;

### **FINANCIAL INSTITUTIONS AND MARKETS ACT, 2015 [Act No. • of 2015]**

#### **INDEPENDENCE**

#### **Standard No. GEN.S.9.8**

*made by NAMFISA under section 382(2)(e) of the Financial Institutions and Markets Act, 2015*

1. In this Standard,
  - (a) “Act” means the *Financial Institutions and Markets Act, 2015* [Act No. • of 2015], and includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act.
  - (b) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise.
2. This standard applies to any individual who is required under the Act to be independent including, without limitation, a member of a board, an auditor, a valuator, a trustee and a custodian.
3. For the purposes of this Standard-
  - (a) a person is considered to have an interest in or a material relationship with a financial institution or financial intermediary if that relationship could be reasonably expected to interfere with the exercise of the person’s independent and objective judgement; and

- (b) a person is considered to have a financial interest in a financial institution or financial intermediary if there exists any contractual relationship or arrangement with the financial institution or financial intermediary or with an associate of that financial institution or financial intermediary from which the person derives a financial benefit, other than a contractual relationship contemplated in sub-clause 5(e) or one which involves the buying and selling of a financial product or financial service.
- 4. Where an individual is required to be independent in respect of an appointment to a position or in any capacity under the Act, that person will not be independent if any of the criteria referred to in clause 5 applies, and in addition an auditor will not be independent if clause 7 applies, and a valuator will not be independent if clause 8 applies.
- 5. In relation to a financial institution or financial intermediary, a person is not independent if, in respect of an appointment to a position or in a capacity contemplated in the Act, such person-
  - (a) has, a direct or indirect interest in or a material relationship with the financial institution or financial intermediary;
  - (b) has a direct or indirect financial interest in the financial institution or financial intermediary, or is associated with a person that has a financial interest in or a material relationship with the financial institution or financial intermediary;
  - (c) is employed, or has been employed, by the financial institution or financial intermediary or an associate of the financial institution or financial intermediary within the last 5 years;
  - (d) is, or has been, a member of a board, trustee or custodian, director or officer of the financial institution or financial intermediary or of an associate of the financial institution or financial intermediary, within the last 5 years; or
  - (e) subject to clause 6, has a material contractual relationship with the financial institution or financial intermediary or an associate of the financial institution or financial intermediary.
- 6. Sub-clauses 3(b) and 5(e) do not apply to the contract or agreement with a financial institution or financial intermediary whereby the person concerned is appointed to a position or in a capacity with that financial institution or financial intermediary that is contemplated by the Act.
- 7. A person who is about to be, or has been, appointed to a position or in any capacity under the Act must disclose any matter which relates to independence which the financial institution or financial intermediary must take into consideration at the time of making the appointment and thereafter.

8. In addition to the other criteria of this Standard, an auditor must not be considered independent if-
- (a) in the case where the auditor is an individual; or
  - (b) in the case where the auditor is a firm of auditors, and an individual member of the firm of auditors has been designated pursuant to subsection 373(2) of the Act, that individual:
    - (a.i) is a director or employee of the financial institution or financial intermediary or of an entity affiliated with the financial institution or financial intermediary; or
    - (a.ii) is associated with the valuator of the same financial institution or financial intermediary.
9. In addition to the other criteria of this Standard, a valuator must not be considered independent if the valuator:
- (a) is the chief executive officer or a director of the financial institution or financial intermediary or of an entity affiliated with the financial institution or financial intermediary; or
  - (b) is affiliated with the auditor of the same financial institution or financial intermediary, or where applicable, with the member of the firm of auditors designated pursuant to subsection 373(2) of the Act.

**FINANCIAL INSTITUTIONS AND MARKETS ACT, 2015 [Act No. • of 2015]**  
**CODE OF CONDUCT**  
**Standard No. GEN.S.9.9**

*made by NAMFISA under sections 382(2)(aaa) and 382(6)(u) of the Financial Institutions and Markets Act, 2015*

1. In this Standard,

- (a) “Act” means the *Financial Institutions and Markets Act, 2015* [Act No. • of 2015], and includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act.

(2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise

2. This Standard applies to all financial institutions and financial intermediaries registered under the Act.
3. The board of a financial institution and the board of a financial intermediary must ensure that a code of conduct is in place, containing the elements described in clause 5 and followed by all board members, directors, trustees, employees and officers.
4. Where a financial intermediary is an individual who is not employed by a financial institution or another financial intermediary that is an entity, that individual must ensure that he or she has a code of conduct containing the elements described in clause 5 in so far as applicable in place and followed by all employees and officers.
5. The recommended basic elements of the Code of Conduct are:

(a) *Code of Conduct Policy*: this is a policy statement that defines ethical standards for conduct;

(b) *Conflicts of Interest*: the code must include a definition of “conflicts of interest” and policy statement on:

- (i) conflicts of interest;
- (ii) actions that are required to be taken where conflicts of interest arise or are likely to arise, including disclosure and recusal; and
- (iii) sanctions for breaches of the code of conduct involving conflicts of interest;

(c) *Legal Compliance*: this requires the board, and all employees and officers of a financial institution or financial intermediary to abide by the Act and all other applicable laws, including rules, regulations and standards relevant to the financial institution or financial intermediary;

(d) *Company Information and Assets*: the board and individual intermediary should include in the code of conduct:

- (i) standards relating to reporting financial and other information and the submission thereof to customers;
- (ii) treatment of confidential information; and
- (iii) use of property and other assets of the financial institution or financial intermediary and of clients, with specific regard to fiduciary responsibilities;

(e) *Workplace Practices*: the code of conduct should provide for ethical behavior, reporting of dishonest, unethical or illegal activities, and compliance with the code of conduct and the Act and other applicable laws, including provisions regarding authorization to enter into contracts on behalf of the financial institution or financial intermediary and sanctions for action without such authority; and

(f) *Reporting and Enforcement*: the code of conduct should provide for reporting serious breaches of the Act, other applicable laws, rules, regulations, standards or codes to NAMFISA and provide for appropriate and proportional sanctions for such breaches.

6. NAMFISA will not be prescriptive insofar as the elements of the code of conduct are concerned; however, it is expected that the board and management of the financial institution or financial intermediary shall exercise discretion in ensuring that the following principles are taken into account:

- (a) act in good faith and in the best interest of the financial institution or financial intermediary and customers;
- (b) act with prudence and reasonable care;
- (c) act with skill, competence and diligence;
- (d) maintain independence and objectivity by, among other actions, avoiding conflicts of interest, refraining from self-dealing, and refusing any gift that could reasonably be expected or perceived to affect conduct;
- (e) comply with the Act, all other applicable laws, rules, regulations, standards or other subordinate measures, and constitutive documents and codes of conduct of the financial institution or financial intermediary;
- (f) deal fairly, objectively, and impartially with all customers;
- (g) take actions that are consistent with the established objectives of the financial institution or financial intermediary and the policies that support those objectives and to review on a regular basis the efficiency and effectiveness of the financial institution or financial intermediary in meeting its goals, including assessing the performance and actions of its service providers;
- (h) maintain confidentiality of the financial institution or financial intermediary and stakeholder information; and
- (i) communicate with stakeholders, NAMFISA and other supervisory authorities in a timely, accurate, and transparent manner.

7. The code of conduct should provide for appropriate sanctions that are proportional to any breaches of the code of conduct and for the consistent application of such sanctions. The code of conduct should provide, at a minimum, the following:

- (a) procedures for the enforcement of the code of conduct, including investigations and disciplinary action;



- (b) clear sanctions;
- (c) oaths of confidentiality by members of the board and management; and
- (d) records of and reporting on breaches of the code of conduct and sanctions.

**FINANCIAL INSTITUTIONS AND MARKETS ACT, 2015 [Act No. • of 2015]**

**OUTSOURCING**

**Standard No. GEN.S.9.10**

*made by NAMFISA under section 382(2)(x) of the Financial Institutions and Markets Act, 2015*

1. In this Standard-

- (a) “Act” means the *Financial Institutions and Markets Act, 2015* [Act No. • of 2015], and includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;
- (b) “Outsourcing Agreement” has the meaning ascribed thereto by clause 12;
- (c) “regulated person” has the meaning ascribed thereto by clause 2; and
- (d) “service provider” has the meaning ascribed thereto by clause 3;
- (e) words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise.

2. This Standard applies to all financial institutions and financial intermediaries registered under the Act, hereinafter referred to as “regulated persons”.

**Materiality and Prohibition**

3. This standard only applies to the outsourcing of a material business activity, as defined in clauses 4, 5 and 6 of this Standard, and the person to whom a material business activity is outsourced by a regulated person is hereinafter referred to as a “service provider”.

4. A material business activity is one that has the potential, if disrupted, to have a significant impact on the regulated person’s business operations or the ability of the regulated person to manage risks effectively.

5. In determining whether an activity is a material business activity, NAMFISA must exercise discretion having regard to such factors as:

- (a) the financial, operational and reputational impact of a failure of the service provider on the regulated person to perform the outsourced activity;
- (b) the potential impact of outsourcing on the provision of services to the regulated person’s customers;

- (c) the potential losses to the regulated person's customers on the failure of a service provider;
  - (d) the cost of the outsourcing arrangement;
  - (e) the degree of difficulty, including the time taken, in finding an alternative service provider or bringing the outsourced activity back in-house;
  - (f) the ability of the regulated person to meet regulatory requirements if there are problems with the service provider;
  - (g) the affiliation or other relationship between the regulated person and the service provider;
  - (h) any potential conflicts of interest that may result through outsourcing to a particular service provider; and
  - (i) the regulatory status of the regulated person and, if applicable, of the service provider.
6. Any activity that is incidental to or directly related to the primary functions of the regulated person is, for the purposes of this Standard, a material business activity.
7. A regulated person must not outsource:
- (a) any of the primary functions for which registration has been approved under the Act; and
  - (b) functions that are deemed by NAMFISA as inhibiting the ability of the regulated person to perform its duties and obligations under the Act.

#### **Requirements for outsourcing material business activity**

8. In assessing any potential outsourcing arrangements, a regulated person must take into account all relevant matters including, but not limited to, those referred to in clauses 9 to 27 inclusive of this Standard.

#### **The role of the Board and senior management**

9. The role of the board and senior management of a regulated person that is an entity is as follows:
- (a) it must identify, assess, manage, mitigate and report on risks associated with outsourcing to ensure that the regulated person can meet its financial and service obligations to its customers and other stakeholders;
  - (b) it must approve the regulated person's outsourcing policy, which must set out its approach to outsourcing material business activities, including a detailed framework for managing all such outsourcing arrangements;
  - (c) it must ensure that the regulated person have procedures in place to ensure that all of its appropriate officers and relevant business units are fully aware of, and comply with, the outsourcing policy;

- (d) the Board and senior management is ultimately responsible for any outsourcing of a material business activity undertaken by a regulated person. Although outsourcing may result in the service provider having day-to-day managerial responsibility for a business activity, the regulated person remains responsible for complying with the Act, this Standard and any other Standards that relate to the outsourced business activity;
- (e) the Board and senior management must ensure that the regulated person's outsourcing risks and controls are taken into account as part of its overall risk management systems; and
- (f) it must ensure that the regulated person's outsourcing policy sets out specific requirements in relation to outsourcing material business activities to:
  - (i) subsidiaries and affiliates; and
  - (ii) service providers located outside Namibia or conducting the material business activity outside Namibia.

#### **Assessment of outsourcing options**

10. A regulated person must be able to demonstrate to NAMFISA that, in assessing the options for outsourcing a material business activity to a service provider, the regulated person has-

- (a) prepared a business plan for outsourcing the material business activity;
- (b) undertaken a tender or other selection process for selecting the service provider;
- (c) undertaken a due diligence review of the chosen service provider;
- (d) involved the board, a committee of the board or senior manager and provided delegated authority from the board, in approving the agreement;
- (e) considered all the matters outlined in clause 13 that must, at a minimum, be included in the outsourcing agreement;
- (f) established procedures for monitoring performance under the outsourcing agreement on a continuing basis;
- (g) addressed the renewal process for the outsourcing agreement and how the renewal will be conducted;
- (h) developed contingency plans that will enable the outsourced business activity to be provided by an alternative service provider or brought in-house if required; and
- (i) considered all key risks associated with the outsourcing and the risk mitigation strategies that will be put in place to address these risks.

11. A regulated person must be able to demonstrate to NAMFISA that, in assessing the options for outsourcing to subsidiaries or affiliates, it has taken into account:

- (a) the changes to the risk profile of the business activity that arise from outsourcing the activity to a subsidiary, affiliate or other associate and how this changed risk profile is addressed within the regulated person's risk management framework;
- (b) the cost of the services being provided and that the regulated person has taken steps to ensure that the cost will not be greater than the fair value of like services that could be provided by an arm's-length service provider;
- (c) the ability of the subsidiary, affiliate or other associate to conduct the business activity on an ongoing basis; and
- (d) the monitoring procedures necessary to ensure that the subsidiary, affiliate or other associate is performing effectively and the manner in which any potential inadequate performance will be addressed.

### **The outsourcing agreement**

12. Except where otherwise provided in this Standard, all outsourcing arrangements must be in writing, and the agreement, hereinafter the "Outsourcing Agreement", must be signed by all parties before the outsourcing arrangement commences.

13. At a minimum, the Outsourcing Agreement (including Outsourcing Agreements with affiliates, subsidiaries and associates) must address the following matters:

- (a) the scope of the arrangement and the services to be supplied;
- (b) commencement and termination dates;
- (c) review provisions;
- (d) remuneration, pricing and fee structure;
- (e) service levels and performance requirements;
- (f) audit and monitoring procedures;
- (g) business continuity management and disaster recovery management;
- (h) confidentiality, privacy and security of information;
- (i) default arrangements and termination provisions;
- (j) dispute resolution arrangements;
- (k) liability and indemnity provisions;
- (l) sub-contracting requirements;
- (m) insurance; and
- (n) to the extent applicable, off-shore arrangements (including through sub-contracting agreements).

13. A regulated person that outsources a material business activity must ensure that the Outsourcing Agreement includes an indemnity to the effect that in the event of any sub-contracting by the service provider to another service provider, the original service provider must remain responsible for that other service provider, including liability for any failure on the part of that sub-contracting service provider.

14. Where as a result of an unexpected event that results in:

(a) the regulated person legally withdrawing from a continuous engagement under an Outsourcing Agreement with the service provider on the outsourced activity ;  
or

(b) the sudden financial or operational failure of a service provider with whom the regulated person has entered into an Outsourcing Agreement, and as a result of that unexpected event it is necessary for the regulated person to enter into an Outsourcing Agreement with another service provider, then clauses 9 to 13 inclusive need be complied with only to the extent that is reasonably possible having regard to the nature of the unexpected event, and the regulated person must notify NAMFISA as soon as practicable of any such new Outsourcing Agreement and must thereafter fully comply with this Standard within a period not exceeding 90 business days.

#### **NAMFISA's access to service providers**

15. An Outsourcing Agreement must contain a clause that allows NAMFISA access to the service provider, including documentation and information held by the service provider relating to the outsourcing arrangement, although in the normal course of supervision, NAMFISA will seek to obtain whatever information NAMFISA requires from the regulated person; in addition, the Outsourcing Agreement must include the right for NAMFISA to conduct on-site visits to the service provider if NAMFISA considers this necessary. NAMFISA expects service providers to cooperate with NAMFISA's requests for information and assistance, and will normally inform the regulated person if NAMFISA intends to undertake an on-site visit to a service provider.

16. The regulated person must take all reasonable steps to ensure that a service provider will not disclose or advertise that NAMFISA has conducted an on-site visit, except as necessary to coordinate with other financial institutions and financial intermediaries regulated by NAMFISA that are existing clients of the service provider.

#### **Off-shoring arrangements – requirement for consultation**

17. An off-shoring arrangement means the outsourcing of a material business activity by a regulated person to a service provider located outside Namibia or to a service provider located in Namibia but conducting the material business activity outside Namibia.

18. A regulated person must consult with NAMFISA prior to entering into an Outsourcing Agreement involving any off-shoring arrangement so that NAMFISA may be satisfied that the risks of the off-shoring arrangement have been adequately addressed by the regulated person's risk management framework.

19. If, in NAMFISA's view, an off-shoring arrangement involves risks that the regulated person is not managing appropriately, NAMFISA must require the regulated person to make other arrangements for the outsourced material business activity as soon as practicable.

## **Remuneration**

20. Remuneration paid in respect of outsourcing must:

- (a) be reasonable and consistent with the fair value of the work to be carried on by the service provider in undertaking the material business activity;
- (b) not be structured in a manner that may encourage the unreasonable or unfair treatment of the regulated persons' customers; and
- (c) not be linked to a measure that will result in, or encourage an activity that may result in an undesirable practice or the mistreatment of the customers of the regulated person.

## **Monitoring**

21. A regulated person must ensure it has sufficient and appropriate resources to manage and monitor an Outsourcing Agreement at all times. The type and extent of resources required will depend on the nature of the outsourced material business activity. At a minimum, monitoring must include:

- (a) maintaining appropriate levels of regular contact with the service provider, ranging from daily operational contact to senior management involvement; and
- (b) a process for regular monitoring of performance under the Outsourcing Agreement, including meeting criteria concerning service levels.

22. A regulated person must advise NAMFISA as soon as possible of any significant problems that have the potential to materially affect the Outsourcing Agreement and, as a consequence, to materially affect the business operations, profitability or reputation of the regulated person.

23. Where an Outsourcing Agreement is terminated, the regulated person must notify NAMFISA as soon as practicable and provide a statement about the transition arrangements and future strategies for carrying out the outsourced material business activity.

## **Audit arrangements**

24. The audit committee or other internal audit function of a regulated person must review any proposed outsourcing of a material business activity and regularly review and report to the board or senior management on compliance with the regulated person's outsourcing policy. Where a regulated person does not have an audit committee or other dedicated internal audit function, it must have in place an alternative arrangement approved by NAMFISA.

25. NAMFISA may request the external auditor of a regulated person, or some other appropriate external expert, to assess the risk management processes in place with respect to an arrangement to outsource a material business activity, and to provide a report thereon. For example, this could cover areas such as information technology systems, data security, internal control frameworks and business continuity plans. Any such report must be paid for by the regulated person and the report must be made available to NAMFISA.

## **Adjustments and exclusions**

26. NAMFISA may, by notice in writing to a regulated person, adjust or exclude a specific requirement of this Standard in relation to:

- (a) that regulated person; or
- (b) the outsourcing of a particular material business activity by that regulated person.

#### **Notification requirement**

27. A regulated person must notify NAMFISA as soon as possible after entering into an Outsourcing Agreement, and in any event no later than 30 business days after execution of the Outsourcing Agreement. This notification requirement applies to all outsourcing of material business activities.

28. A regulated person must notify NAMFISA as soon as possible after any extension, renewal or amendment of an Outsourcing Agreement, and in any event no later than 30 business days after such extension, renewal or amendment comes into effect.

29. When a regulated person notifies NAMFISA of a new Outsourcing Agreement, it must also provide a summary to NAMFISA of the key risks involved in the outsourcing arrangement and the risk mitigation strategies put in place to address these risks. NAMFISA may request additional material in order to assess the impact of the outsourcing arrangement on the regulated person's risk profile, if NAMFISA considers this necessary.

30. A regulated person must notify NAMFISA of any material developments (for example terminations, material non-performance or disputes) with respect to the outsourcing during the duration of any Outsourcing Agreement.

#### **Compliance**

31. Any Outsourcing Agreement entered into on or after the date on which this Standard takes effect must comply with this Standard.

32. Any Outsourcing Agreement entered into prior to the date on which this Standard takes effect must comply with this Standard from and after the date of any extension, renewal or amendment of the Outsourcing Agreement.

### **FINANCIAL INSTITUTIONS AND MARKETS ACT, 2015 [Act No. • of 2015]**

#### **INSTITUTIONAL INVESTMENT**

#### **Standard No. GEN.S.9.11**

*made by NAMFISA under sections 382(2)(hh), 382(3)(bb), 382(6)(s), 382(7)(j) and 382(8)(e) of the Financial Institutions and Markets Act, 2015*

1. In this Standard:

- (a) "Act" means the Financial Institutions and Markets Act, 2015 [Act No. • of 2015], and includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;
- (b) "Investment Policy Statement" means the investment policy statement described in clauses 4 and 5 of this Standard;

- (c) “Financial Institutions” means the financial institutions referred to in clause 2.
2. Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following which are defined in section 1 of the Act:
- (a) actuary
  - (b) beneficiary fund;
  - (c) board;
  - (d) financial institution;
  - (e) friendly society;
  - (f) insurer;
  - (g) medical aid fund;
  - (h) reinsurer;
  - (i) retirement fund; and
  - (j) valuator.
3. This Standard applies to all beneficiary funds, friendly societies, insurers, medical aid funds, reinsurers and retirement funds registered under the Act or to which the Act otherwise applies (hereafter “Financial Institutions”).
4. This Standard sets out:
- (a) the matters that must be considered in the investment process of a Financial Institution; and
  - (b) the matters that must be addressed in the Investment Policy Statement of the Financial Institution.

### **Transparency**

5. The Financial Institution must have a written investment policy statement (referred to in this Standard as the “Investment Policy Statement”), that -
- (a) identifies the investment decisions or categories of investment decisions of the Financial Institution that are required to be made, and identifies the person, whether the board, member or members of the board, officer or officers of the Financial Institution or outside experts, designated to take each decision or category of decisions, and why this particular structure has been selected;
  - (b) sets out the investment objectives of the Financial Institution;
  - (c) sets out the Financial Institution’s strategic asset allocation, including projected investment returns on each asset class, and how the strategic asset allocation has been determined;
  - (d) sets out the mandates given to all advisors, investment managers and other experts; and



- (e) sets out the nature of the fee structures in place for all advisors, investment managers and other experts, and why these particular fee structures have been selected.
6. An Investment Policy Statement must address all of the issues stated in this Standard, including but not limited to:
- (a) investment, return and risk objectives;
  - (b) portfolio investment policies, including diversification;
  - (c) liquidity and cash flow requirements;
  - (d) organizational structure and investment procedures;
  - (e) exercise of voting rights, including proxy voting;
  - (f) valuation procedures or methodologies for unlisted investments;
  - (g) monitoring portfolio investments and performance;
  - (h) related party transactions;
  - (i) risk management;
  - (j) quantitative asset exposure limits;
  - (k) investment restrictions;
  - (l) use of financial derivatives or structured products that have the economic effect of financial derivatives; and
  - (m) the frequency with which the Investment Policy Statement and matters related thereto must be reviewed and revised.

### **Accountability**

- 7. The board of a Financial Institution is ultimately responsible for the investment activities of the Financial Institution.
- 8. The board has a fiduciary duty to deal with investments with due care, skill and diligence and in good faith and to ensure that any investment activity complies with the Act, including this Standard, all other applicable laws and the Investment Policy Statement of the Financial Institution.
- 9. The guidelines contained in this Standard should be adapted by each board to suit the particular circumstances and objectives of the Financial Institution, taking into account all other factors that may affect the solvency (where applicable) and funding of the Financial Institution and its ability to meet its financial obligations.
- 10. The guidelines contained in this Standard are intended to serve as a guide only, without limiting the care that the board of Financial Institutions are expected to take in the performance of its duties.

### **Effective decision-making**

- 11. Decisions pursuant to the Investment Policy Statement of a Financial Institution must be taken-
  - (a) only by individuals or entities with the skills, experience, knowledge, information and resources necessary to take such decisions effectively; and
  - (b) only by persons authorised under the Act to do so.

12. Where the board elects to take investment decisions itself, the board must make such decisions:

- (a) pursuant to and in furtherance of the Investment Policy Statement;
- (b) with due regard to the expertise of the board and any expert advice obtained;
- (c) in the interest of the Financial Institution and of persons deriving a benefit from, or vested with rights by the Act or any other law;
- (d) with due regard to the nature and extent of the risks involved; and
- (e) in accordance with the Act and any other applicable laws.

### **Clear objectives**

13. The board must set out an overall investment objective in the Investment Policy Statement of the Financial Institution that:

- (a) represents its best judgment of what is necessary to meet the Financial Institution's liquidity needs, liabilities (actual or contingent) and solvency requirements (where applicable); and
- (b) takes account of its attitude to risk, and specifically its willingness to accept underperformance due to market conditions.

### **Focus on investment strategy**

14. Strategic asset allocation decisions should receive a level of attention that fully reflects the contribution such decisions can make towards achieving the Financial Institution's investment objectives.

15. The strategic asset allocation adopted by a Financial Institution will be a function of its liabilities, in particular:

- (a) the need to ensure that it holds sufficient assets to match its liabilities by nature, term and currency; and
- (b) the need to balance its expected rates of return with the levels of risk that it is able to accept having regard to its financial condition.

16. As a result of clauses 13 and 14, in the case of retirement funds that are not defined contribution funds and similarly structured Financial Institutions, detailed analysis and management of the asset/liability relationship will be a pre-requisite to the determination and review of the strategic asset allocation.

17. The board must consider a full range of investment opportunities, not excluding from consideration any major asset class, including unlisted investments.

### **Expert advice**

18. The members of a board must collectively have sufficient expertise to understand the important issues relating to the investment process and should ensure that all individuals conducting and monitoring investment activities have sufficient levels of knowledge, skills and experience.

19. In the event that a board does not have sufficient expertise, it must obtain expert advice and guidance from persons with the required qualifications and expertise and, in doing so:

- (a) contracts for experts should be open to competition; and
- (b) the Financial Institution should be prepared to pay sufficient fees for each service to attract a broad range of experts.

### **Written mandates**

20. A board must enter into a written investment mandate with an investment manager, which must be in accordance with Standard No. GEN.S.9.12 – Content of Investment Mandate.

### **Activism**

21. A board must have an explicit policy on whether the Financial Institution allows shareholder activism and, if so, the terms and conditions of the activism.

22. If the board allows shareholder activism, the policy must be used solely to:

- (a) promote the economic interests of the Financial Institution and its clients and beneficiaries;
- (b) enhance the economic value of the Financial Institution's long-term or illiquid investments; and
- (c) monitor and, where appropriate and possible, influence the management of entities in which the Financial Institution has invested.

23. The board must have a written policy on proxy voting generally, and specifically in respect of shareholder activism if allowed, which policy must be made with due regard to the costs (in both time and money) and the desirability of such a policy, and must specifically name the fiduciaries who may exercise such fiduciary authority.

24. In delegating shareholder activism by way of a proxy voting policy, such a policy must require the named fiduciary to:

- (a) make proxy voting decisions in the interest of the Financial Institution and its customers and beneficiaries;
- (b) not subordinate the Financial Institution's interests to unrelated objectives or other interests;
- (c) avoid conflicts of interest, including own interests; and
- (d) report to the board on proxy voting decisions, including the rationale for the decisions (which must be to enhance the economic interest or value of the Financial Institution's investments in accordance with clause 22).

25. The board must periodically review the proxy voting decisions.

### **Appropriate benchmarks**

26. The board must:

- (a) set appropriate benchmarks against which the Financial Institution will measure investment performance;
- (b) in consultation with the investment manager, consider and review the appropriateness of benchmarks from time to time, and in particular, whether the benchmarks may lead to sub-optimal investment strategies;
- (c) if limits are set on divergence from an index, ensure that such limits reflect the approximations involved in index construction and selection;
- (d) where the board believes active management has the potential to achieve higher returns, set both target and risk controls that reflect this, giving investment managers the freedom to pursue genuinely active strategies.

### **Performance measurement**

- 27. A board must arrange, at least yearly, for the measurement of the performance of investments and assess their investment procedures and decisions.
- 28. A board must arrange, at least yearly, for the formal assessment of performance and decision making delegated to an investment manager or other experts.
- 29. Where active portfolio management is chosen, the board must assess the performance of the investment manager in relation to the objectives and any benchmarks set, to determine:
  - (a) whether the performance has generated returns commensurate with the active management mandate; and
  - (b) the risks taken to achieve such performance and whether the performance justifies the risks.

### **Investment control**

- 30. A board must exercise sufficient oversight and control over the assets and investments of the Financial Institution.
- 31. In exercising oversight and control, a board must have regard to the provisions of the Act pursuant to which assets of Financial Institutions may not be alienated, hypothecated, pledged or otherwise encumbered to the detriment of the Financial Institution or its clients or beneficiaries.
- 32. A board must have a policy for custodial (and sub-custodial), settlement and securities administration arrangements which impact control over the Financial Institution's investments with a view to reducing the risk of alienation, hypothecation, pledging, or other encumbrance of assets.
- 33. The board must pay special attention to securities lending arrangements and decide whether the assets of the Financial Institution may be subject to securities lending (e.g. for portfolio management and yield enhancement purposes), and the terms and conditions (e.g. insurance, hedging) subject to which securities lending may be undertaken.

34. A board must have regard to the rights and obligations of the investment manager or other financial intermediary in managing or dealing with the Financial Institution's assets, especially with regard to the collection of income (dividends and interest), proceeds from securities disposals, investment of additional assets, and rights and bonus issues and in dealing with these funds in relation to the Financial Institution's bank accounts or otherwise.
35. A board must ensure that the assets and investments of the Financial Institution are at all times kept separate from the assets of fiduciaries or other persons, in accordance with the Act and any standard dealing with the segregation and separation of assets of financial institutions, and ensure that the assets of the Financial Institution are at all times recorded in the name of the Financial Institution, with due regard to e.g. pooled portfolios or arrangements.
36. A board must only enter into and maintain an arrangement for the safekeeping of the Financial Institution's assets with a person duly authorized under the Act, and must periodically review such arrangement.
37. A board must pay particular attention to the fitness and propriety of persons in foreign jurisdictions, including putting in place requirements for the custodian to conduct due diligence on any sub-custodian to be used in a foreign jurisdiction and to satisfy the board of the fitness and propriety of the sub-custodian, and that the sub-custodian is a regulated entity.

#### **Regular reporting**

38. Where appropriate, a board must publish at least yearly, its Investment Policy Statement and the results of monitoring advisors, investment managers and other experts, and make the Investment Policy Statement and such results available to interested parties, including NAMFISA.
39. A board must explain any deviations from the Investment Policy Statement.

## **FINANCIAL INSTITUTIONS AND MARKETS ACT, 2015 [Act No. • of 2015]**

### **CONTENTS OF INVESTMENT MANDATE Standard No. GEN.S.9.12**

*made by NAMFISA under section 382(2)(hh) of the Financial Institutions and Markets Act, 2015*

1. In this Standard-

- (f) "Act" means the *Financial Institutions and Markets Act, 2015* [Act No. • of 2015], and includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;

- (g) “investor” means a person who commits funds to an investment manager for investment in a portfolio of securities;
- (h) “Investment Mandate” means an agreement, in accordance with this Standard, between an investment manager and an investor that is a financial institution; and
- (i) “portfolio” means a group of assets consisting of securities including any amount in cash committed for investment management by an investor to a registered investment manager pursuant to an Investment Mandate.

2. Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following:

(a) as defined in section 1 of the Act:

- (i) affiliate;
- (ii) associate;
- (iii) financial institution;
- (iv) NAMFISA;
- (v) subsidiary;

(b) as defined in section 75 of the Act:

- (i) investment management;
- (ii) investment manager.

3. This Standard applies to:

- (a) every investment manager registered under the Act that is a party to an Investment Mandate; and
- (b) every investor that is:
  - (i) a financial institution referred to in subsections (a), (e), (f), (g), (h) and (i) of the definition of “financial institution” in section 1 of the Act;

- (ii) registered under the Act or to which the Act otherwise applies;
- (iii) a party to an Investment Mandate.

4. An Investment Mandate and all amendments thereto and renewals thereof must be in writing, and must be signed by the parties before the Investment Mandate, or renewal or amendment commences.

5. Discretion must be exercised in assessing the appropriateness and adequacy of the contents of an Investment Mandate and must take into account all relevant matters including, but not limited to, the following:

- (a) the investment objective of the investor;
- (b) investment and counterparty restrictions;
- (c) expected returns and risk tolerance;
- (d) nature of mandate (*e.g.*, discretionary);
- (e) portfolio and risk management;
- (f) custody and use of assets;
- (g) reporting and disclosure requirements;
- (h) fees and remuneration; and
- (i) delegation of mandate and termination.

6. Subject to an evaluation of the particular circumstances, NAMFISA must determine whether an Investment Mandate contains appropriate and adequate contents with reference to the criteria referred to in clause 4.

### **Objective**

7. The factors set out in sub-clauses 6(a) to (c) are relevant to the assessment of the adequacy and appropriateness of the objective of an Investment Mandate, which must, at a minimum, address:

- (a) the investment objectives of the investor;
- (b) the investment strategy to be adopted in the short and long term; and
- (c) the terms and conditions of appointment of the investment manager.

### **Portfolio management**

8. The Investment Mandate must, at minimum, set out the following:

- (a) the duties of the investment manager;
- (b) the types and classes of assets in which investments are to be made;
- (c) the composition of asset classes and limits thereto;
- (d) jurisdictional gross exposure to asset classes and restrictions thereto;
- (e) maximum exposure limits for each asset class;
- (f) the index or other measure to be used for benchmarking performance;
- (g) actions and procedures in the case of non-performance; and
- (h) valuation methods and policies adopted in valuing the listed and unlisted assets in the portfolio.

### **Custody of assets**

9. The Investment Mandate should, at minimum, address the following:
- (a) the provision of a power of attorney for the investment manager to perform investment management functions on behalf of the investor;
  - (b) responsibility for appointing a custodian or nominee;
  - (c) the separation of the funds of the investor from the funds of the investment manager and its affiliates and associates, and any other clients;
  - (d) the obligation of the investment manager to deal with the funds of the investor in accordance with the requirements of the Act and the Investment Mandate immediately upon receipt; and
  - (e) any other information that NAMFISA deems necessary.

### **Reporting**

10. The Investment Mandate must stipulate:
- (a) the provision of monthly statements to the investor, reflecting at a minimum, the following:
    - (i) a statement of the investment objectives governing the portfolio as at the closing and starting date of the monthly statement;
    - (ii) a summary of the portfolio structure;
    - (iii) investments purchased or sold during the reporting period;
    - (iv) investments delivered or returned to the investor or nominee;
    - (v) cash received or payments made;
    - (vi) details of non-cash transactions;



- (vii) income accruals earned and expenses incurred;
  - (viii) aggregate charges of the investment manager and any subsidiaries, affiliates or associates of the investment manager;
  - (ix) any remuneration received by the investment manager or its subsidiaries, affiliates or associates from a third party in respect of the transactions entered into, or in respect of any other services provided, in connection with the portfolio; and
  - (x) book and market values of all investments in the portfolio;
- (b) a quarterly portfolio report to the investor, at minimum setting out the following:
- (i) all information required by sub-clauses (a)(i) to (x) inclusive;
  - (ii) a statement with respect to how the Investment Mandate was executed;
  - (iii) rates of return and comparison to relevant benchmarks;
  - (iv) commentary on the investment outlook; and
  - (v) the investment strategy the investment manager intends to follow in the short and long term;
- (c) the appointment of an auditor to the investment manager as required by section 98(1) of the Act and the audit of the financial records of the investment manager;
- (d) access to the audited records and other reports of the investment manager by the investor's auditor or other person designated by the investor; and
- (e) that all records must be maintained for at least 5 years or the duration of the Investment Mandate, whichever is longer.

### **Fees and remuneration**

11. The Investment Mandate, at minimum, should address;
- (a) the basis of calculating investment management and performance fees and any other remuneration; and
  - (b) the responsibility for transactional, brokerage, transfer and other incidental fees borne by the investment manager or charged to the investor's funds.

### **Risk management**

12. The Investment Mandate should provide for:

- (a) acknowledgment of possibility of loss by the investor;
- (b) the policy of the investment manager on risk management and internal controls;
- (c) acquisition by the investment manager of fidelity guarantee insurance;
- (d) procedures regarding amendments to, and renewal of, the Investment Mandate;
- (e) confidentiality and custody of investor's information;
- (f) corporate governance policies of the investment manager and how they are applied to investment policies and the Investment Mandate;
- (g) procedures to deal with conflicts of interest;
- (h) procedures to be followed in the event of a breach of any of the terms of the Investment Mandate; and
- (i) arbitration and dispute resolution procedures.

## **FINANCIAL INSTITUTIONS AND MARKETS ACT, 2015 [Act No. • of 2015]**

### **PAYMENT OF CONTRIBUTIONS**

#### **Standard No. GEN.S.9.13**

*made by NAMFISA under section 382(2)(hh) of the Financial Institutions and Markets Act, 2015*

#### **1. In this Standard-**

- (a) "Act" means the *Financial Institutions and Markets Act, 2015* [Act No. • of 2015], and includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act;
- (b) "Board" means a board referred to in sub-clause (2) and in the case of a friendly society, the management and principal officer carrying out the functions of a board;
- (c) "registered fund" means a friendly society, medical aid fund and retirement fund registered under the Act or to which the Act applies, as referred to in sub-clauses (2)(b), (d) and (e);

(d) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including, without limitation, the following:

(a) **board**, as defined in section 1;

(b) **friendly society**, as defined in section 1;

(c) **member-**

(i) in relation to a friendly society, as defined in section 276(1);

(ii) in relation to a medical aid fund, as defined in section 308(1);

(d) **medical aid fund**, as defined in section 1; and

(e) **retirement fund**, as defined in section 1.

2. This Standard applies to all registered funds.

3. The total amount of all subscriptions or contributions due to a registered fund by an employer, employee or member, as the case may be, must be paid in full to the registered fund by not later than seven (7) days after the end of each month in respect of which the contributions or subscriptions are payable.

4. The amount of any subscriptions or contributions or any part thereof which remains unpaid after the seven day period referred to in clause 3, together with interest payable thereon, if applicable, shall be a debt due to the registered fund, recoverable from the person liable for the payment, and the Board may file with the clerk or registrar of a competent court a statement certified by it as correct stating the amount of unpaid subscriptions or contributions and any interest thereon, and thereupon such statement has all the effects of a civil judgment lawfully given in that court against the person in favour of the registered fund for a liquid debt in the amount specified in the statement and may be enforced as such.

5. Notwithstanding clause 4, NAMFISA may direct the person liable for the unpaid amounts forthwith to make payment of such amounts to the registered fund, and the rules of the registered funds must state if any interest is payable on outstanding subscriptions or contributions and the manner of determining any such interest.

INFORMATION FROM LIST APPLICANTS AND OTHERS ON LISTED  
INDIVIDUALS, LISTED COMPANIES AND OTHERS  
Standard No. GEN.S.9.14

*made by NAMFISA under sections 382(3)(q), 382(4)(b), 382(5)(c), 55(4), 88(7) and  
173(4) of the of the Financial Institutions and Markets Act, 2015*

1. In this Standard,
  - a. “Act” means the *Financial Institutions and Markets Act, 2015* [Act No. • of 2015], and includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act.
  - b. “list applicant” means:
    - i.i. for the purposes of Chapter 2 of the Act, a registered insurance company, as defined in section 4 and referred to in section 55(1) of the Act;
    - i.ii. for the purposes of Chapter 3 of the Act, the following, as defined in section 75 and referred to in section 88(1) to (4) of the Act:
      - i.ii.1. a registered exchange
      - i.ii.2. a registered investment manager;
      - i.ii.3. a registered securities advisor that is a company; and
      - i.ii.4. a registered securities dealer that is a company; and
    - i.iii. for the purposes of Chapter 4 of the Act, a manager, as defined in section 162 and referred to in section 173(1) of the Act;
  - c. “listed individual” means an individual who is:
    - (i) for the purposes of Chapter 2 of the Act, an insurance agent, as defined in section 53 and referred to in section 55(1) of the Act;
    - (ii) for the purposes of Chapter 3 of the Act, the following, as defined in section 75 and referred to in section 88(1) to (4) of the Act:
      1. an authorised user;
      2. a portfolio manager;
      3. an authorised advisor; and
      4. an authorised representative; and
    - (iii) for the purposes of Chapter 4 of the Act, an authorised representative, as defined in section 162 and referred to in section 173(1) of the Act;

- d. “listed company” means a company that is:
  - d.i. for the purposes of Chapter 3 of the Act, an authorised user as defined in section 75 of the Act, and referred to in section 88(1) of the Act;
  - d.ii. for the purposes of Chapter 4 of the Act, an authorised representative as defined in section 162 of the Act, and referred to in section 173(1) of the Act.
- 2. This standard applies to:
  - (a) all list applicants, listed individuals and listed companies;
  - (b) an exchange, an authorised user and an authorised representative, referred to sub-clause 6(1); and
  - (c) a manager, an authorised representative and a designated representative, referred to in sub-clause 6(2).

*Information required for registration of listed individuals and listed companies*

3. Where a list of individuals is submitted to NAMFISA by a list applicant, in the case of each listed individual who has not yet been registered by NAMFISA, the list applicant must provide NAMFISA with the following:

- (a) full name;
- (b) the address and contact details;
- (c) the financial services<sup>3</sup> which the individual will be authorised to provide;
- (d) confirmation that the individual complies with section 55(3), 88(5) or 173(2) of the Act, as applicable; and
- (e) the registration fee required by NAMFISA.

4. Where a list of companies is submitted to NAMFISA by a list applicant, in the case of each listed company which has not yet been registered by NAMFISA, the list applicant must provide NAMFISA with the following:

- (a) full company name;
- (b) the company registration number;
- (c) the address of the principal office and contact details;

---

<sup>3</sup> The definition of “financial services” in section 1 of the Act includes financial products and financial advice.

- (d) the address and contact details of the members of the board and principal officer;
- (e) the financial services which the company will be authorised to provide;
- (f) confirmation that the company has a code of conduct and applicable systems in place with respect to its authorised representatives or designated representatives, as applicable; and
- (g) the registration fee required by NAMFISA.

5. (a) Where a list of employees who are its authorised representatives is submitted to an exchange by an authorised user that is a company, pursuant to section 93(1) of the Act, in the case of each authorised representative who has not yet been registered by NAMFISA, the authorised user must provide the exchange with the information and items referred to in sub-clause (3).

(b) Where a list of employees who are its designated representatives is submitted to a manager by an authorised representative that is a company, pursuant to section 175(1) of the Act, in the case of each designated representative who has not yet been registered by NAMFISA, the authorised representative must provide the manager with the information and items referred to in sub-clause (3).

(c) The information and items referred to in sub-clauses (1) and (2) are the following:

- (a) full name;
- (b) the address and contact details;
- (c) the financial services which the individual will be authorised to provide;
- (c) confirmation that the individual complies with section 93(2) or 175(2) of the Act, as applicable; and
- (e) any registration fee required by the exchange or authorised user.

***Code of conduct and systems***

6. Each list applicant must have a code of conduct and applicable systems in place to ensure that its listed individuals and listed companies comply, on an on-going basis, with the code of conduct, and in the case of listed individuals, with the requirements of section 55(3), 88(5) or 173(2) of the Act, as applicable.

7. Each authorised user referred to in clause 6(1) and each authorised representative referred to in clause 6(2) must have a code of conduct and applicable systems in place to ensure that its authorised representatives or designated representatives, as the case may be, comply, on an ongoing basis, with its code of conduct and with the requirements of section 93(2) or 175(2) of the Act, as applicable.

### ***Updating lists***

8. A list of individuals or a list of companies referred to in clause 4, 5 or 6 shall be updated forthwith by the list applicant or by the authorised user or authorised representative concerned at any time that:

- (a) an individual or company is added to the list; or
- (b) a registered individual or registered company is deleted from the list.

9. In the event that clause 9(a) applies, the list applicant or the authorised user or authorised representative as applicable, must provide NAMFISA, the exchange or the manager, as applicable, with the information and fee referred to in clause 4, 5 or 6, and confirm that the code of conduct and the systems referred to in clause 7 or 8 are in place.

10. In the event that clause 7(b) applies, the list applicant or the authorised user or authorised representative, as applicable, must provide NAMFISA, the exchange or the manager, as applicable, with the registration number assigned by NAMFISA to the individual or company at the time of registration, a statement of the reasons that the individual or company has been removed from the list, and confirmation that the individual or company has been given those reasons and granted a reasonable opportunity to be heard.

11. An exchange referred to in clause 6(1) and a manager referred to in clause 6(2) must, upon receipt of the information and items referred to in clause 6(3) or clause 9, 10 or 11, verify the information, and having done so, forward the information forthwith to NAMFISA, together with any required fee.

### ***Other information***

12. NAMFISA may at any time, both before and after a listed individual or a listed company is registered, require the list applicant, listed individual or listed company to submit to NAMFISA any additional information that NAMFISA may require.

13. An exchange referred to in clause 6(1) and an authorised user referred to in clause 6(2) may at any time, both before and after an authorised representative referred to in clause 6(1) or a designated representative referred to in clause 6(2) is registered, require the authorised representative or designated representative, as applicable, to submit to the exchange or authorised user any additional information that the exchange or authorised user may require.

14. NAMFISA may at any time, both before and after an authorised representative or a designated representative referred to clause 14 is registered, require the exchange or authorised

user referred to in clause 14, or the authorised representative or designated representative to submit to NAMFISA any additional information that NAMFISA may require.

15. (1) A list applicant must inform NAMFISA forthwith in the event that with respect to a listed individual or listed company registered by NAMFISA:

(a) any of the circumstances referred to in sections 56(1), 89(1) or 174(1), as applicable, exist with respect to the listed individual or listed company; or

(b) the listed individual or listed company is not in compliance with the code of conduct referred to in clause 6.

(2) An authorised user referred to in clause 6(1) and an authorised representative referred to in clause 6(2) must inform the exchange referred to in clause 6(1) or the manager referred to in clause 6(2), as applicable, forthwith in the event that with respect to an authorised representative or designated representative registered by NAMFISA:

(a) any of the circumstances referred to in section 94(1) or 176(1), as applicable, exist with respect to the authorised representative or designated representative; or

(b) the authorised representative or designated representative is not in compliance with the code of conduct referred to in clause 7.

(3) An exchange referred to in clause 6(1) and a manager referred to in clause 6(2) must, upon receipt of any information referred to in clause (2), verify the information, and having done so, forward the information forthwith to NAMFISA.

#### *Manner of submission*

16. (1) A list applicant and an exchange referred to in clause 6(1) or a manager referred to in clause 6(2) must submit to NAMFISA the information required by this Standard electronically using the electronic system designated by NAMFISA.

(2) A list applicant, an exchange or a manager referred to in sub-clause (1) must submit to NAMFISA a signed hard copy of the information required by this Standard, if the electronic copy referred to in sub-clause (1) is not signed.